

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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THOMAS L. WILLIAMS.

Case No. 3:20-cv-00223-RFB-BNW

Plaintiff,

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STATE OF NEVADA, *et al.*,

Defendants.

ORDER

I. INTRODUCTION

Before the Court is Plaintiff Thomas L. Williams's Motion for Temporary Restraining Order (ECF No. 9) and identical Motion for Preliminary Injunction (ECF No. 10). For the following reasons, the Court denies both motions.

II. PROCEDURAL BACKGROUND

Plaintiff, who is currently incarcerated and under the custody of the Nevada Department of Corrections, (“NDOC”) filed his complaint and application to proceed in forma pauperis on April 9, 2020. ECF No. 1. The Court screened the operative amended complaint on July 15, 2020. ECF No. 7. Plaintiff filed his motions for temporary restraining order and motion for preliminary injunction on August 3, 2020. ECF Nos. 9, 10.

III. FACTUAL BACKGROUND

Plaintiff alleges as follows in his motions for a temporary restraining order and preliminary injunction:

1 Plaintiff was housed in Unit 1 at Northern Nevada Correctional Center (“NNCC”).
2 Unit 1 is the resist and reframe program for inmates aged 50 and over. Plaintiff has PTSD
3 and bipolar disorder. Plaintiff alleges that he has been in “grave risk since entering NNCC
4 yard in March 2020.” He states that NDOC officials are not providing hand sanitizer, masks
5 for inmates, and are not implementing proper social distancing at meal service, feeding
6 200 inmates at a time. He further alleges that inmates are sleeping less than three feet
7 apart. Plaintiff had a parole hearing originally scheduled for July 2020, but this has been
8 rescheduled to August 12, 2020.

9 On June 9, 2020 he found out that a caseworker tested positive for the coronavirus.
10 His unit was placed on quarantine after 3 to 5 days, and the unit was given tests for the
11 novel coronavirus. However neither the plaintiff nor the rest of Unit 1 inmates were given
12 masks, daily temperature checks, or hand sanitizer. They also were not given instructions
13 on what to do if they had symptoms of COVID-19.
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15 Plaintiff was then transported without a mask with 8 other inmates on a van to
16 Southern Desert Correctional Center (“SDCC”). Plaintiff has since been recovering in Unit
17 6 at SDCC and has been quarantined for COVID-19. The unit phones and showers are
18 not being sanitized daily. Plaintiff now requests that this Court convene a three-judge
19 panel and grant his release.
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21 **IV. LEGAL STANDARD**

22 The analysis for a temporary restraining order is “substantially identical” to that of
23 a preliminary injunction. Stuhlbarg Intern. Sales Co., Inc. v. John D. Brush & Co., Inc.,
24 240 F.3d 832, 839 n.7 (9th Cir. 2001).

25 A preliminary injunction is “an extraordinary remedy that may only be awarded
26 upon a clear showing that the plaintiff is entitled to such relief.” Winter v. Natural Res.
27 Def. Council, Inc., 555 U.S. 7, 22 (2008). To obtain a preliminary injunction, a plaintiff
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1 must establish four elements: "(1) a likelihood of success on the merits, (2) that the plaintiff
 2 will likely suffer irreparable harm in the absence of preliminary relief, (3) that the balance
 3 of equities tips in its favor, and (4) that the public interest favors an injunction." Wells
 4 Fargo & Co. v. ABD Ins. & Fin. Servs., Inc., 758 F.3d 1069, 1071 (9th Cir. 2014), as
 5 amended (Mar. 11, 2014) (citing Winter, 555 U.S. 7, 20 (2008)). A preliminary injunction
 6 may also issue under the "serious questions" test. Alliance for the Wild Rockies v. Cottrell,
 7 632 F.3d 1127, 1134 (9th Cir. 2011) (affirming the continued viability of this doctrine post-
 8 Winter). According to this test, a plaintiff can obtain a preliminary injunction by
 9 demonstrating "that serious questions going to the merits were raised and the balance of
 10 hardships tips sharply in the plaintiff's favor," in addition to the other Winter elements. Id.
 11 at 1134-35 (citation omitted).

14 **V. DISCUSSION**

15 The Court denies the motion. The only injunctive relief that Plaintiff seeks is that
 16 the Court convene a three-judge panel pursuant to the Prison Litigation Reform Act
 17 ("PRLA") and order his release. Under the PRLA, a prisoner release order may only be
 18 entered by a three-judge court. 18 U.S.C. § 3626(a)(3). In order for a court to convene a
 19 three-judge court, the court must have previously entered an order for less intrusive relief
 20 that failed to remedy the federal right, and the defendant(s) must have had a reasonable
 21 amount of time to comply with the previous court orders. 18 U.S.C. § 3626(a)(3)(A).

22 The prerequisites of 18 U.S.C. § 3626(a)(3)(A) have not been met. Plaintiff has not
 23 previously sought any injunctive relief in this case, and so the Court cannot find that less
 24 intrusive injunctive relief had been considered prior to convening a three-judge court.
 25 Accordingly, the Court denies the motion.

1 **VI. CONCLUSION**

2 **IT IS THEREFORE ORDERED** that Plaintiff's Motion for Temporary Restraining
3 Order (ECF No. 9) and Motion for Preliminary Injunction (ECF No. 10) are DENIED.
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6 DATED THIS 3rd day of August, 2020.

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11 **HON. RICHARD F. BOULWARE, II**
12 **UNITED STATES DISTRICT JUDGE**

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